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Washington, D.C. 20463

2011 MAR -7 AM 11: 26

FIRST GENERAL COUNSEL'S REPORT

CELA
SENSITIVE

MUR: 6399

DATE RECEIVED: Oct. 19, 2010

DATE ACTIVATED: Dec. 9, 2010

EXPIRATION OF SOL: Earliest: Sept. 27, 2015

Latest: Nov. 11, 2015

COMPLAINANT:

Friends of Stephene Moore and Kaye Cleaver in her
official capacity as Treasurer

RESPONDENT:

Yoder for Congress and Donald W. Kaiser, in his
official capacity as Treasurer

RELEVANT STATUTES:

2 U.S.C. § 431(6)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 432 (e)(4)
11 C.F.R. § 102.14(a)
11 C.F.R. § 102.14(b)(3)
11 C.F.R. § 110.11(b)(1)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

This matter involves allegations that Yoder for Congress and Donald W. Kaiser, in his
official capacity as Treasurer (the "Yoder Committee" or "Respondent"), violated 2 U.S.C.
§ 432(e)(4) and 11 C.F.R. § 102.14(a) by using the name of Kevin Yoder's opponent, Stephene
Moore, in the title of a Yoder Committee website called www.StepheneMoore.com.
Specifically, the complaint alleges that the Yoder Committee created www.StepheneMoore.com
for the purpose of disseminating "false and negative information about Ms. Moore and her

1 campaign” in a manner that might confuse potential readers, because its name did not
2 unambiguously show that the website was in opposition to Moore.¹ Complaint at 1-2.

3 The Yoder Committee admits that it was responsible for all content on
4 www.StepheneMoore.com. Response at 1. It made no secret of its involvement in the website,
5 which attracted substantial media attention, and even issued a press release about the launch of
6 the website on September 27, 2010. *Id.* at 2. According to the Yoder Committee, however, it
7 has not violated the Act’s prohibition on the use of a federal candidate’s name by an
8 unauthorized committee, as set forth in 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a), because
9 Yoder for Congress is an “authorized committee” registered with the Commission, and because
10 the content of the website was clearly identifiable as anti-Moore. *Id.*

11 Based on a thorough review of the complaint, the response, and other available
12 information, we recommend the Commission find reason to believe that Yoder for Congress and
13 Donald W. Kaiser, in his official capacity as Treasurer, violated 2 U.S.C. § 432(e)(4) and 11
14 C.F.R. § 102.14(a) by using the name of Yoder’s opponent, a federal candidate, in the title of a
15 special project that does not clearly and unambiguously indicate that the project was in
16 opposition to the named candidate. We also recommend that the Commission enter into pre-
17 probable cause conciliation with the Yoder Committee and approve a proposed Conciliation
18 Agreement with a civil penalty

¹ The official website for the Moore campaign is www.StepheneMooreforCongress.com. The official website for the Yoder campaign is www.YoderforCongress.com.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 During the 2010 election, Kevin Yoder was the Republican candidate for the U.S. House
4 of Representatives Third District of Kansas, and Yoder for Congress was his authorized
5 campaign committee. Stephene Moore was Yoder's Democratic opponent, running for the seat
6 then-held by her-husband, retiring six-term Representative Dennis Moore (D). The Moore
7 campaign registered the URL address www.StepheneMooreforCongress.com as its official
8 website.

9 On September 27, 2010, Respondent launched the website www.StepheneMoore.com
10 and issued a press release entitled, "Yoder for Congress Launches Stephenemoore.com." The
11 press release stated, "Visitors to stephenemoore.com can watch an interactive video that guides
12 users through the \$50,000 worth of world travel Mrs. Moore has taken on the time of taxpayers
13 and special interest groups," and "Stephene Moore has chosen to make her campaign about the
14 smoke and mirrors game that is typical of Washington politicians. This website is our way of
15 poking fun at that ridiculousness." Response, Attachment 1.

16 The www.StepheneMoore.com website (no longer available) contained videos of Ms.
17 Moore and her husband, Congressman Moore, which questioned Moore's ties to Kansas. See
18 Response, Attachment 1 (screenshot of front pages of www.StepheneMoore.com website).² The
19 website contained an interactive page with detailed taxpayer-funded trips Moore had taken with
20 her husband while he was on official business to "exotic locations," and itemized the cost of each

² The Yoder Committee states that it disabled the website after the election, Response at 2, but provides what it describes as a screen shot of the front page of the website. *Id.* The Response provides four web pages from the website. Response, Attachment 1. A "No Moore" banner and Yoder Committee disclaimer appear on two of the web pages and a "Contribution" button appears on all four of the web pages. *Id.* It is unclear whether these web pages are from the actual www.StepheneMoore.com website, or links from the Yoder campaign website, which the history at the bottom of the attached web pages indicates may be the case. *Id.*

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1 trip. *Id.* The site included a map of the District of Columbia, which showed how close Moore's
2 Washington townhome is to Capitol Hill, and displayed a picture of Moore and her husband with
3 Speaker Nancy Pelosi under the mark "Pelosi approved." See "Yoder for Congress Launches
4 Stephenemoore.com" Press Release dated September 27, 2010. The website also contained
5 imbedded YouTube videos of a Yoder staff member following Moore to numerous campaign
6 events and questioning her repeatedly as to whether she would vote for Pelosi as Speaker of the
7 House if elected. *Id.* Some, but not all, of the pages of the website included the disclaimer,
8 "Paid for by Yoder for Congress," at the bottom of the page. Response, Attachment 1 at 1, 4.

9 The launch of the anti-Moore campaign website attracted significant media attention
10 from local and national newspapers and internet blogs. See, e.g., Editorial Board, *More Dirty*
11 *Trickster Lineup Includes Yoder, Mason, Biggs, Blunt, Carnahan*, Kansas City Star, Oct. 28,
12 2010 ("To anyone unfamiliar with the site, [www.StepheneMoore.com] could appear to be
13 [Moore's] site, rather than the Yoder-sponsored site that it really is."); Tricia Miller, *Kansas:*
14 *Whose Name Is It Anyway?*, CQ-Roll Call, Sept. 27, 2010; Justin Kendall, *StepheneMoore.com*
15 *bashes Stephene Moore's taxpayer and special interest funded trips*, The Pitch Blog, Sept. 30,
16 2010. Moore reportedly complained about the website, but was unsuccessful in her attempts to
17 have it shut down. See Brandon Shawnee, *More Headaches for Moore as Yoder Campaign*
18 *Launches StephanieMoore.com*, The Kenig Konnection Blog, Oct. 1, 2010. The Yoder
19 Committee dismantled the website after the election in which Kevin Yoder defeated Stephene
20 Moore. Response at 2.

21 **B. Analysis**

22 The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that "[t]he
23 name of each authorized committee shall include the name of the candidate who authorized such

1 committee under paragraph (1) [of the Act].” 2 U.S.C. § 432(e)(4). Further, the Commission’s
2 regulations provide,

3 The name of each authorized committee shall include the name of the candidate
4 who authorized such committee. Except as provided in paragraph (b) of this
5 section, no unauthorized committee shall include the name of any candidate in its
6 name. For the purposes of this paragraph, “name” includes any name under
7 which a committee conducts activities, such as solicitations or other
8 communications, including a special project name or other designation.

9
10 11 C.F.R. § 102.14(a). An unauthorized political committee may only include the name of a
11 candidate in the title of a special project name or other communication if the title clearly and
12 unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3).

13 Complainant contends that the www.StepheneMoore.com website qualifies as a special
14 project that was conducted by the Yoder Committee, which was not an authorized committee of
15 candidate Stephene Moore, in violation of 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a).

16 Complaint at 1. Complainant avers that the title of the website was confusing and misleading to
17 the public, and that members of the public who reached the website by typing in
18 www.StepheneMoore.com had a reasonable expectation of reaching the official website of
19 candidate Moore, not a website sponsored by her opponent. *Id.* at 2. In addition, according to
20 Complainant, the website solicits contributions for the Yoder Committee, “which is exactly what
21 section 102.14(a) is designed to prevent.” *Id.*

22 The Yoder Committee admits that it owned, operated, and controlled the website
23 www.StepheneMoore.com, and acknowledges that it is not the authorized committee of Stephene
24 Moore. Response at 1-2. It claims, however, that it is not the type of “unauthorized committee”
25 whose acts are restricted by 11 C.F.R. § 102.14(a), because it was the “authorized committee” of
26 Kevin Yoder, and because campaigns often use their opponents’ names in campaign television

1 advertisements, mailings, and other communications to show the differences between opponents.

2 *Id.* at 2.

3 While denying that the www.StepheneMoore.com website was a "special project of an
4 unauthorized committee," as described in 11 C.F.R. § 102.14(b)(3), because the website was
5 created by the "authorized" Yoder Committee, Respondent simultaneously asserts that the
6 website met the requirements of a special project of an unauthorized committee, because the
7 content of the website was clearly anti-Moore and could not be construed as supporting Moore's
8 candidacy. *Id.* at 2. In support, the Yoder Committee cites the banner at the top of one web page
9 that reads, "No Stephene Moore," and the interactive travel expense page that clearly criticized
10 Ms. Moore. *Id.* at 3-4. The Yoder Committee argues that even media outlets and bloggers
11 understood the website to be anti-Moore. *Id.* at 4. Because the content, as opposed to the name,
12 of the website could not confuse anyone who saw it as being supportive of candidate Moore, and
13 because the website disclosed that the Yoder Committee paid for it, the Yoder Committee
14 contends that no violation of 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a) occurred. *Id.* at 3-4.

15 The Yoder Committee's position that Section 432(e)(4) does not apply to it because it is
16 an "authorized committee" of Kevin Yoder, is without merit. As set forth in 2 U.S.C. § 432(e),
17 an authorized committee is the committee designated by a candidate to receive contributions or
18 make disbursements on that candidate's behalf; it must include the candidate's name in its title,
19 and must file with the Commission as the candidate's authorized committee within 15 days of
20 being so designated. 2 U.S.C. § 432(e). A candidate may only have one such authorized
21 committee. 2 U.S.C. § 432(e)(3). Since the Yoder Committee admits that it is not the
22 "authorized committee" of Stephene Moore, its use of her name in the

1 www.StepheneMoore.com website is an action by an "unauthorized committee" that is
2 prohibited by 2 U.S.C. § 432(e)(4).

3 An exception to the general prohibition against the use of a federal candidate's name by
4 an unauthorized committee in a special project or communication is that the committee may use
5 the candidate's name only if the title of the special project clearly and unambiguously indicates
6 opposition to the candidate whose name is being used. 11 C.F.R. § 102.14(b)(3). The
7 Commission has previously determined that the operation of a website by a committee qualifies
8 as a "special project or other communication." See Advisory Opinion 1995-9 (NewtWatch
9 PAC). Thus, it appears that the website was a special project or communication by the Yoder
10 Committee.

11 The title of the www.StepheneMoore.com website does not qualify for the exception in
12 11 C.F.R. § 102.14(b)(3) because the title of the website does not clearly and unambiguously
13 show opposition to candidate Moore. Respondent claims that the content of the website showed
14 it was in opposition to candidate Moore because several items "clearly were anti-Moore,"
15 including the "No Stephene Moore banner" and the "Paid for by Yoder for Congress" disclaimer
16 that appeared on some pages on the website. Response at 2. However, the regulations provide
17 that the title -- without reference to the content -- of the special project or communication must be
18 clear and unambiguous. See Explanation and Justification for "Special Fundraising Projects and
19 Other Use of Candidate Names by Unauthorized Committees," 59 Fed. Reg. 17367, 17268-
20 17269 (Apr. 12, 1994) (because it addresses the concern over the possibility of confusion or
21 abuse by an unauthorized committee, the ban on the use of a candidate's name in a special
22 project applies specifically to the project's title and not just to the body of the accompanying
23 communication). Therefore, the Yoder Committee's creation and operation of the

www.StepheneMoore.com website is a violation of 2 U.S.C. § 432(e)(4) that is not subject to the special project or communication exception set forth in 11 C.F.R. § 102.14(b)(3).

Accordingly, we recommend the Commission find reason to believe that Yoder for Congress and Donald W. Kaiser, in his official capacity as Treasurer, violated 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a).

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

We recommend the Commission enter into pre-probable cause conciliation with the Yoder Committee.

IV. RECOMMENDATIONS

- (1) Find reason to believe that Yoder for Congress and Donald W. Kaiser, in his official capacity as Treasurer, violated 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a);
- (2) Enter into pre-probable cause conciliation;
- (3) Approve the attached conciliation agreement;
- (4) Approve the attached Factual and Legal Analysis; and
- (5) Approve the appropriate letter.


Christopher Hughey
Acting General Counsel

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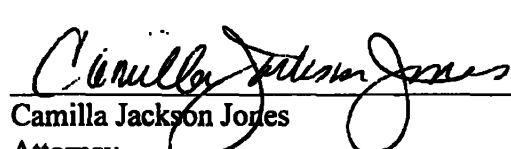
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3/15/2011

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Attachments: